



IRS Nationwide  
**TaxForum**

| 2018

Advocating  
for  
Innocent Spouse Relief



IRS

Tax  
Forum

IRS Nationwide

2018

# Learning Objectives

After completing this course, you will:

- Recognize the basic components of the National Taxpayer Advocate's Annual Report to Congress
- Understand the Most Litigated Issues (MLI) process
- Grasp basic rules regarding relief from joint and several liability
- See these rules illustrated in some recent court cases



IRS

Tax Forum

IRS Nationwide

2018

# Annual Report to Congress

- IRC 7803(c)(2)(B)(ii)
  - At least 20 most serious problems (MSPs)
  - Recommendations to Congress (LRs)
  - 10 most litigated issues (MLIs)
- Due December 31
- MLI reporting period – June 1 – May 31



IRS

Tax  
Forum

IRS Nationwide

2018

# *Pro Se Cases by Issues*

Most Litigated Issue	Litigated Cases Reviewed	<i>Pro Se</i> Litigation	Percentage of <i>Pro Se</i> Cases
Accuracy-Related Penalty	138	84	61%
Trade or Business Expenses	99	62	63%
Summons Enforcement	89	64	72%
Collection Due Process	85	46	54%
Gross Income	85	57	67%
Failure to File, Failure to Pay, and Estimated Tax Penalties	60	39	65%
Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax	60	30	50%
Charitable Deductions	28	14	50%
Family Status Issues	24	19	79%
Relief from Joint and Several Liability	24	15	63%
<b>Total</b>	<b>692</b>	<b>430</b>	<b>62%</b>



IRS

Tax Forum

IRS Nationwide

2018

# Outcomes for *Pro Se* and Represented Taxpayers

Most Litigated Issue	Pro Se Taxpayers			Represented Taxpayers		
	Total Cases	Taxpayer Prevalled in whole or in part	Percent	Total Cases	Taxpayer Prevalled in whole or in part	Percent
<b>Accuracy-Related Penalty</b>	84	14	17%	54	13	24%
<b>Trade or Business Expenses</b>	62	19	31%	37	15	41%
<b>Summons Enforcement</b>	64	0	0%	25	6	24%
<b>Collection Due Process</b>	46	4	9%	39	3	8%
<b>Gross Income</b>	57	10	18%	28	8	29%
<b>Failure to File, Failure to Pay, and Estimated Tax Penalties</b>	39	6	15%	21	6	29%
<b>Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax</b>	30	0	0%	30	2	7%
<b>Charitable Deductions</b>	14	3	21%	14	5	36%
<b>Family Status Issues</b>	19	4	21%	5	1	20%
<b>Relief from Joint and Several Liability</b>	15	5	33%	9	3	33%
<b>Total</b>	<b>430</b>	<b>65</b>	<b>15%</b>	<b>262</b>	<b>62</b>	<b>24%</b>



# Most Litigated Issues Over the Years

Most Litigated Issues	<u>2015</u>	<u>2016</u>	<u>2017</u>
Accuracy-Related Penalties (I.R.C. §§ 6662(b)(1) & (2))	113 (1)	122 (1)	138 (1)
Collection Due Process (I.R.C. §§ 6320 & 6330)	79 (5)	99 (2)	85 (4)
Trade or Business Expenses (I.R.C. § 162)	99 (2)	73 (5)	99 (2)
Gross Income (I.R.C. § 61)	80 (4)	81 (4)	85 (4)
Summons Enforcement (I.R.C. §§ 7602, 7604, & 7609)	84 (3)	87 (3)	89 (3)
Relief From Joint and Several Liability (I.R.C. § 6015)	24 (10)	N/A	24 (9)
Total Number of Ten Most Litigated Cases	640	609	692



IRS

Tax  
Forum

IRS Nationwide

2018

# Joint & Several Liability

- IRC § 6013(a): Married taxpayers may file joint returns
- IRC § 6013(d)(3): Filing a joint return establishes joint and several liability for the full amount of tax and any additions or adjustments
- Each spouse is individually responsible for
  - Accuracy and completeness of the return; and
  - Payment of the tax



IRS

Tax Forum

IRS Nationwide

2018

# IRC § 6015: Types of Relief

- § 6015(b): Understatement relief
- § 6015(c): Understatement relief
  - No longer married
  - Legally separated
  - Not living together
- § 6015(f): Understatement and/or underpayment relief



IRS

Tax Forum

IRS Nationwide

2018

# Form 8857

Form **8857**

(Rev. January 2014)

Department of the Treasury  
Internal Revenue Service (99)

## Request for Innocent Spouse Relief

OMB No. 1545-1596

► Information about Form 8857 and its separate instructions is at [www.irs.gov/form8857](http://www.irs.gov/form8857).

### Important things you should know

- **Do not file this form with your tax return.** See *Where To File* in the instructions.
- Review and follow the instructions to complete this form. Instructions can be obtained at [www.irs.gov/form8857](http://www.irs.gov/form8857) or by calling 1-800-TAX-FORM (1-800-829-3676).
- While your request is being considered, the IRS generally cannot collect any tax from you for the year(s) you request relief. However, filing this form extends the amount of time the IRS has to collect the tax you owe, if any, for those years.
- The IRS is required by law to notify the person on line 5 that you requested this relief. That person will have the opportunity to participate in the process by completing a questionnaire about the tax years you enter on line 3. This will be done before the IRS issues preliminary and final determination letters.
- The IRS will not disclose the following information: your current name, address, phone numbers, or employer.

### Part I Should you file this form?

Generally, both you and your spouse are responsible, jointly and individually, for paying any tax, interest, or penalties from your joint return. If you believe your current or former spouse should be solely responsible for an erroneous item or an underpayment of tax from your joint tax return, you may be eligible for innocent spouse relief.



IRS

Tax Forum

IRS Nationwide

2018

## IRC § 66(c) Relief (Community Property)

- *Poe v. Seaborn*: Each spouse taxed on half of community income
- Relief from operation of community property laws
- Similar to § 6015, but important differences
- IRS Publication 971



IRS

Tax  
Forum

IRS Nationwide

2018

## § 6015(b) Relief

- Erroneous item(s) of non-requesting spouse (NRS)
- Requesting Spouse (RS) did not know and had no reason to know of the understatement when return was signed
- Inequitable to hold the RS liable
- Timely request - 2 year rule
- Refund available



IRS

Tax Forum

IRS Nationwide

2018

# Allocation of Liability Between Spouses Under § 6015(c)

- Erroneous item(s) of NRS
- Divorced, widowed, legally separated, or living apart from NRS for the past 12 months
- Must be timely request – two-year rule
- No refunds



IRS

Tax Forum

IRS Nationwide

2018

## § 6015(f) “Equitable Relief”

- 1) Relief under IRC § 6015(b) or (c) is unavailable; and
- 2) Taking into account all the facts and circumstances, it would be inequitable to hold the taxpayer liable for the underpayment or deficiency.



IRS

Tax Forum

IRS Nationwide

2018

# Rev. Proc. 2013-34 § 4.01 Streamlined Determination Threshold Conditions

- 1) RS filed joint return for tax year RS is seeking relief
- 2) Relief not available to the RS under 6015(b) or (c)
- 3) Claim must be timely filed
  - No two-year rule



IRS

Tax Forum

IRS Nationwide

2018

# Streamlined Determination Threshold Conditions – Cont'd

- 4) No assets were transferred between RS and NRS as part of a fraudulent scheme by the spouses
- 5) The NRS did not transfer disqualified assets to the RS
- 6) The RS did not knowingly participate in the filing of a fraudulent joint return
- 7) The income tax liability from which the RS seeks relief is attributable (in full or in part) to an item of NRS or an underpayment resulting from NRS's income.



IRS

Tax Forum

IRS Nationwide

2018

## Rev. Proc. 2013-34 § 4.03 Streamlined Determination

- Spouses no longer married;
- Economic hardship of RS; and
- No knowledge or reason to know of item giving rise to understatement; or
- That NRS would not pay



IRS

Tax Forum

IRS Nationwide

2018

## Additional Factors from Rev. Proc. 2013-34

- Legal obligations of the spouses;
- Significant benefit to the RS;
- RS compliance with income tax laws;
- RS mental or physical health



IRS

# Spousal Abuse Can Change Consideration of Other Factors

- Knowledge factor
- Significant benefit factor
- May overcome attribution



Tax Forum

IRS Nationwide

2018

# Effect of Requesting Innocent Spouse Relief

- IRS collection action suspended
- Period of limitations on collection suspended



IRS

Tax Forum

IRS Nationwide

2018

# Rights of Nonrequesting Spouse (NRS)

- IRC § 6015(h)(2): NRS must be notified and given an opportunity to participate in any administrative proceeding
- If full or partial relief is granted to the RS, the NRS can file a protest with IRS Appeals
- NRS can intervene if RS filed a petition in Tax Court
- NRS can't appeal the Tax Court decision
- NRS can't petition the Tax Court



IRS

Tax Forum

IRS Nationwide

2018

# Assisting Your Client

- If your client is the requesting spouse:
  - Verify appropriateness of filing
  - Verify that claim can be processed
- If your client is the nonrequesting spouse:
  - Can participate in admin proceedings
  - Can intervene in Tax Court case



IRS

Tax Forum

IRS Nationwide

2018

# Judicial Review

- Taxpayer files Form 8857, *Request for Innocent Spouse Relief*
- IRS reviews the request
- IRS issues a final notice of determination granting or denying relief in whole or in part
- The taxpayer has 90 days from the date the IRS mails the notice to file a petition with the Tax Court



IRS

Tax Forum

IRS Nationwide

2018

# Privacy Concerns

- Taxpayer files Form 8857, *Request for Innocent Spouse Relief*
- NRS receives notice and permitted to participate in administrative process
- IRS will not disclose personal information unrelated to making determination about the relief request



IRS

Tax Forum

IRS Nationwide

2018

# Authorized Disclosure Rules

- IRC 6103(e)(1)(B) permits disclosure of a joint return, when requested in writing, to either spouse or authorized representative
- IRC 6103(e)(7) permits anyone authorized to receive a return to also receive return information related to the return without written request if the disclosure would not seriously impair federal tax administration
- IRC 6103(e)(8) provides for disclosures of certain information, when requested in writing, pertaining to deficiencies assessed to joint filers who are no longer married or no longer reside in the same household



IRS

Tax Forum

IRS Nationwide

2018

# Cases in 2017 Annual Report

- 24 federal opinions
- 16 for the IRS, 8 for TP
- TP represented in 9 cases, *pro se* in 15 cases
- *Pro se* TPs prevailed in 5 of 15
- Non-requesting spouse intervened in 9 of 24



IRS

Tax Forum

IRS Nationwide

2018

# Procedural Issues in Litigation

- 5 of 24 cases
- Exclusive jurisdiction of the Tax Court or affirmative defense in district/bankruptcy court
- No Tax Court jurisdiction if missed the 90-day deadline prescribed by § 6015(e)(1)(A)



IRS

Tax Forum

IRS Nationwide

2018

## Litigation on the Merits

- 19 cases, TPs – full relief in 8
- Knowledge of deficiency by RS – 16 of 19
- NRS intervened in 8 of 19:
  - IRS won in 5 of these 8 cases
  - RS prevailed in 3 of these 8 cases



IRS

Tax  
Forum

IRS Nationwide

2018

## Litigation on the Merits (#2)

- *Okorogu v. Comm'r*, T.C. Memo. 2017-53
- IRC sec. 6015(f)
- NRS (husband) intervened



IRS

Tax Forum

IRS Nationwide

2018

## Litigation on the Merits (#3)

- *Canty v. Comm'r*, T.C. Memo. 2016-169
- IRC § 6015(c), then IRC § 6015(b) or (f)
- Seven-factor test from Rev. Proc. 2013-34



IRS

Tax  
Forum

IRS Nationwide

2018

## Litigation on the Merits (#4)

- *Taft v. Comm'r*, T.C. Memo. 2017-66
- IRC § 6015(b)



IRS

Tax Forum

IRS Nationwide

2018

## Resources

- IRS Pub. 971, *Innocent Spouse Relief*
- IRS Form 8857, *Request for Innocent Spouse Relief*
- Revenue Procedure 2013–34
- 2017 Annual Report Most Litigated Issue — *Relief from Joint and Several Liability Under IRC § 6015*



IRS

Tax Forum

IRS Nationwide

2018

# How TAS Can Help

- Determine the status of claim and whether timeframes are being met
- Ask IRS to reconsider a denial or to review at a higher level



IRS

Tax Forum

IRS Nationwide

2018

# Contact TAS

- [www.TaxpayerAdvocate.irs.gov](http://www.TaxpayerAdvocate.irs.gov)
- [www.youtube.com/tasnta](http://www.youtube.com/tasnta)
- [www.facebook.com/YourVoiceAtIRS](http://www.facebook.com/YourVoiceAtIRS)
- [twitter.com/YourVoiceatIRS](https://twitter.com/YourVoiceatIRS)
- Call 877.777.4778
- File Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*



**Tax Forum**  
IRS Nationwide

2018

# Contact TAS

Subject Matter Expert

Chris Duling, Attorney Advisor  
[Christopher.M.Duling@irs.gov](mailto:Christopher.M.Duling@irs.gov)